



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0033]

RIN 1625-AA00

### Safety Zone; Corpus Christi Ship Channel, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of Corpus Christi Bay and the Corpus Christi Ship Channel. This action is necessary to provide for the safety of life on these navigable waters near the Corpus Christi Bayfront, during an airshow. This rulemaking will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective daily from 11:30 a.m. through 4:30 p.m. each day from April 29, 2021, through May 2, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0033 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Margaret Brown, Waterways Management Division, Sector Corpus Christi, U.S. Coast Guard, email [Margaret.A.Brown@uscg.mil](mailto:Margaret.A.Brown@uscg.mil); telephone 361-244-4784.

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b><i>Federal Register</i></b>  |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

## **II. Background Information and Regulatory History**

On November 20, 2020, Schultz Airshows notified the Coast Guard that the Buccaneer Commission will host the Wings Over South Texas Airshow daily, 11:30 a.m. through 4:30 p.m. from April 29, 2021, through May 2, 2021. The Airshow's aerobatic box will take place over Corpus Christi Bay within a rectangular zone defined by the following coordinates; 27°49'2.78"N, 097°23'16.1"W; 27°47'3.69"N, 097°23'14.62"W; 27°49'2.73"N, 097°22'42.97"W; 27°47'5.46"N, 097°22'41.02"W; and back to 27°49'2.78"N, 097°23'16.1"W. In response, on February 3, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone: Corpus Christi Ship Channel, Corpus Christi, TX in 86 FR 8157. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended April 5, 2021, we received one comment. The comment was unrelated to the proposed rulemaking or event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the Wings Over South Texas Airshow.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the Wings Over South Airshow would be a safety concern for anyone within the defined area daily, 11:30 a.m. to 4:30 p.m. from

April 29, 2021 through May 2, 2021. The Airshow's aerobatic box will take place over Corpus Christi Bay within a rectangular zone defined by the following coordinates; 27°49'2.78"N, 097°23'16.1"W; 27°47'3.69"N, 097°23'14.62"W; 27°49'2.73"N, 097°22'42.97"W; 27°47'5.46"N, 097°22'41.02"W; and back to 27°49'2.78"N, 097°23'16.1"W. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM published February 3, 2021 which was out of the scope of the proposed rulemaking or event. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone daily from 11:30 a.m. through 4:30 p.m. from April 29, 2021 through May 2, 2021. The safety zone will cover all navigable waters within a rectangular zone defined by the following coordinates; 27°49'2.78"N, 097°23'16.1"W; 27°47'3.69"N, 097°23'14.62"W; 27°49'2.73"N, 097°22'42.97"W; 27°47'5.46"N, 097°22'41.02"W; and back to 27°49'2.78"N, 097°23'16.1"W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11:30 a.m. to 4:30 p.m. airshow. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted on Channel 16 VHF-FM (156.8 MHz) or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and short duration of five hours each day for four days.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or

email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting five hours for four days that will prohibit entry into a 2 nautical miles by .5 nautical mile box that crosses the Corpus Christi Ship Channel. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

**PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0033 to read as follows:

**§ 165.T08-0033 Safety Zone; Corpus Christi Bay, Corpus Christi, TX.**

(a) Location. The following area is a temporary safety zone: all navigable waters of the Corpus Christi Bay within the following defined coordinates: 27°49'2.78"N, 097°23'16.1"W; 27°47'3.69"N, 097°23'14.62"W; 27°49'2.73"N, 097°22'42.97"W; 27°47'5.46"N, 097°22'41.02"W; and back to 27°49'2.78"N, 097°23'16.1"W.

(b) Effective period. This section is effective daily from 11:30 a.m. through 4:30 p.m. from April 29, 2021 through May 2, 2021.

(c) Regulations. (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF-FM (156.8 MHz) or by telephone at 361-939-0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: April 22, 2021

E.J. GAYNOR

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sector Corpus Christi

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